SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

Coordination Proceeding Special Title (Rule 1550(b))	
In re TOBACCO CASES II	Case No. JCCP No. 4042
This document relates to: The People of the State of California, et al, v. Philip Morris Incorporated, et al., Los Angeles Superior Court Case No. BC 194217;	DEPOSITION OF SCOTT A. LUKE CONFIDENTIAL EXCERPTS
The People of the State of California, et al., v. General Cigar Co., et al, San Francisco Superior Court Case No. 996780;	
The People of the State of California, et al, v. Brown & Williamson, et al., San Francisco Superior Court Case No. 996781; and	
People of the State of California v. Tobacco Exporters, et al., San Francisco Superior Court, Case No. 301631	
SERVICE LIST "B"	

TAKEN ON: Tuesday, June 13, 2000
TAKEN AT: 401 B Street, Suite 1700
San Diego, California
REPORTED BY: CYNTHIA DEPWEG
CSR NO. 3280
RPR NO. 036984

(Whereupon, the following testimony is deemed confidential material and subject to protective order entered by the Superior Court of the County of Los Angeles, State of California and is bound separately.)

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Q. You have seen those before?

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A. Yes.
Q. What are they, if they're all the same subject matter?
A. These are all where a company comes in and wants to reduce their price for a period of time in our stores. So we will reduce the price by the amount they

give us for a period of time.
Q. Is that also called a buy-down agreement?
A. Yeah, it's been called that.
Q. And all of those pertain to buy-down agreements?
A. Looks like it.
Q. Is the company that approached you with those agreements R.J. Reynolds in every instance?
A. Let's start at the top. I can't tell on this last one. It's too faint. All the other ones are.
Q. The last one would be Bates No. R68?
A. Yeah.
MR. FOSTER: Can you tell --
THE WITNESS: I can't tell.
MR. FOSTER: Can you tell from the brand name?
THE WITNESS: It's the same person that says from Reynolds. They're all Reynolds.
BY MS. FROSTROM:
Q. Do you get these agreements when they come in?
A. Yes.
Q. Do you handle the implementation of those agreements?
A. Define "implementation."
Q. Tell me what you do with them when they come in.
A. What I will do is I will sign off on these, make sure that the proper dates are on here for

the period of time, and I will forward them off to the pricing coordinator to actually insert the bonus buys into our system.
Q. Do you decide whether you will participate in any particular promotion?
A. Oh, yeah.
Q. How do you decide which ones to participate in?
A. Anything I forward on to the pricing coordinator, we will participate in, and there's very few that we don't participate in.
Q. Can you remember any specific cases where you decided not to participate?
A. No.
Q. What is the name of your salesperson with R.J. Reynolds?
A. Kim Owens.
Q. How long has she been your salesperson, contact person?
A. For at least a year. Past that, I couldn't tell you.
Q. Do you participate in any other promotions with R.J. Reynolds other than the buy-down promotions?
A. No.
Q. Do you accept any kind of danglers to use in the stores?
A. Not as far as I know.

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Q. What about the fixtures; do you have

display agreements with the tobacco companies?
A. No.
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Q. Have the tobacco manufacturers ever sent you advertising material to post in the stores to you?
A. The only one I know of is the We Card program. If they're under 18, they don't sell cigarettes.
Q. And that went directly to you?
A. I think that's probably gone directly to the stores. It didn't come through me.
Q. Are you aware of any other material that are sent to the stores?
A. No.
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(Plaintiffs' Exhibit No. 4118 was marked.)
BY MS. FROSTROM:
Q. Marking Exhibit 4118, Bates Nos. R26 through R43, do you recognize the documents in that packet?
A. Yes.
Q. What are they?
A. All but three of these are the exact same things as we had from Reynolds, where it's a buy-down for a certain price put on the item.
Q. All of them involve Lorillard?
A. Yes.
Q. What are the three that are different?
A. There's three here that said merchandising

payment. They still pay us an amount for space on the shelf.
Q. Is Lorillard the only company that does that?
A. Yes.
Q. Are they paying for placement?
A. To tell you the truth, I don't know what they're paying for.
Q. You didn't negotiate that payment?
A. No.
Q. And you're the one that signs the Lorillard promotional agreements as well?
A. Yes.
Q. Can you recall choosing not to sign a promotional agreement from Lorillard?
A. No.
Q. And they have all involved the buy-down programs?
A. Yes.
Q. Have you ever been asked to participate in a cigarette manufacturer's sweepstakes program?
A. No.
Q. Do you know if any of the stores have or do participate in those sweepstakes?
A. Not that I know of.
Q. What about Marlboro gear; are you aware of any Marlboro gear promotions in Raley's stores?
A. Not in the last year.

MS. TUCKER: I'm sorry. What was the answer?
THE WITNESS: Not in the last year.
MS. TUCKER: Thank you.
BY MS. FROSTROM:
Q. Winston Nation, are you aware of any of those promotions in Raley's stores?
A. No.
Q. And any programs involving free samples,

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are you aware of any of those at Raley's stores?
A. Free samples, no.
Q. Or a card that you can send in to get free samples, anything along those lines?
A. Not that I know of.
Q. Do you know how many cigarettes Raley's sells a month?
A. This is an estimation. It's about 60 cartons per store per month.
Q. Some stores would be more; some would be less?
A. Yeah.
Q. Do you sell more from any particular manufacturer than from another?
A. I'm sure Philip Morris items, we sell more of.
Q. Do you know the breakdown of those 60 cartons or just that it's 60 cartons a month?
A. No.
Q. Has that average been consistent, the year

that you have been a buyer?
A. I only looked at it one time. I couldn't tell you if it's gone up or down.
Q. When did you look at it?
A. Oh, about three months ago.
Q. And why did you do that?
A. We were looking at reducing the size of the sections.
Q. The size of the --
A. The size of the tobacco sections in our stores.
Q. Why?
A. The sales aren't there.
Q. When did you first begin to think that the sales weren't there?
A. About six months ago.
Q. What brought that to your attention?
A. Visiting some stores, having the stores show me the amount of sales having to go back to the manufacturer.
Q. That would be items that you buy that aren't sold?
A. We buy that went out of code before they sold.
Q. What does "out of code" mean?
A. There's about a year to a year and a half length of life, of freshness, in the cigarettes. So we were trying to reduce the size to keep the products more

fresh on the shelf.
Q. So have you reduced the amount that you are buying?
A. Not yet.
Q. Is that still under consideration?
A. We're still doing some analysis on how we're going to do this.
Q. What kind of analysis are you doing?
A. Well, we're looking at our internal scan data.
Q. What is that?
A. We're getting back the sales from our individual stores and analyzing the information coming

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back from each store.
Q. Have you done any promotions to try to increase the sales?
A. Only what's been presented to us in these contracts.
Q. Have there been any discussions about doing more kind of marketing things to increase the sales?
A. No.
Q. Why do you do the buy-down promotions?
A. Because they're presented to us.
Q. Do they benefit you at all?
A. Increase our margins slightly. Might increase sales for a short period of time.
Q. Increase margins. Is that profit margins?

A. Yes.
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Q. You deal directly with the tobacco manufacturers to buy the cigarettes?
A. No.
Q. Who do you deal with?
A. We deal with our distribution center, which is called Super Stores Industries.
Q. Is that owned by Raley's?

A. I think it's a partnership.
Q. With whom?
A. A company called Save Mart.
Q. Anyone else?
A. I don't think anybody else pulls merchandise out of that facility.
Q. So when you want to buy something for the stores, you go to this Super Stores Industries and order it from them?
A. If they have it available. They have -- they have their own set of hours that they buy products. If it's available to us, we will buy it from them.
Q. What if it's not available from them?
A. Then it's not available.
Q. Then it's not available at all?
A. Right.
Q. You would never have the occasion in your position to go directly to a manufacturer to buy a product?
A. No.
Q. And that was the distribution center that you referred to on the --
A. Actually, the distribution center is what I was referring to as the perishable distribution center where we have meats and produce, stuff like that.
Q. What about the warehouses; what are they --
A. That's SSI. SSI is one of the warehouses.

Q. SSI?
A. Super Stores Industries.
Q. So the warehouses are the distributors, and the distributing centers are the --
A. They're all basically the same thing. We just call them a little bit different to keep ourselves organized.
Q. I'm sure we have funny words in this business as well.
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Q. Marking Exhibit 4119, Bates Nos. R44 through R61.

(Plaintiffs' Exhibit No. 4119 was marked.)

BY MS. FROSTROM:

Q. Do you recognize that packet of documents?

A. Most of these are different buy-downs for pricing purposes.

Q. Involving Philip Morris?

A. Yes.

Q. Most of them. What are the rest?

A. There's two in here that I see where it's -- there's been coupons turned in that were out of date. So we went around and re-billed Philip Morris for these coupons.

Q. What coupons would that refer to?

A. My understanding is, in some cigarettes, the manufacturers attach dollar-off coupons to cartons of cigarettes that are redeemable, and some of these coupons, when they were turned in, were out of date. So

they were rejected from the clearinghouse. So we went ahead and re-billed them for these items.

Q. Do you know if those coupons are present on the cigarettes sold in Raley's stores?

A. Currently, I don't know.

Q. If they have ever been?

A. They obviously have been, but I don't -- I don't know when the last time was when we had them on our shelves.

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Q. Have you ever done these promotional agreements with Liggett?

A. I don't think we even have any Liggett products in our store anymore.

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Q. What about Brown & Williamson?
A. Yes.
Q. You do these promotional agreements with them?
A. It's been a long time.
Q. How long has it been since you have seen one?
A. I haven't seen one in the last year.
Q. Who is your contact person with Lorillard?
A. Terry Roberts.
Q. Is that a he or a she?
A. It's a he.
Q. How long has he been your contact person?
A. For at least a year.
Q. How about Philip Morris?
A. His name is Todd Mattingly.
Q. And how long has he been your contact person?
A. About six months.
Q. Who was it prior to that?
A. Shannon Knight.
Q. And had she been your contact person for the entire --
A. The previous six months.
Q. How often do you have contact with these various individuals?
A. About once every three months.
Q. Do they call you?

A. Yes.
Q. And what is the purpose of that phone call?
A. Normally, it's to present new items.
Q. What new items have you been presented with within the past year?
A. There's some Marlboro Milds, and there's some Camel's Turkish Gold or something like that. Those are the only two that I remember.
Q. Have you ever been involved with any testing of new products?
A. Are you talking about a cutting or taste testing?
Q. Taste testing with cigarettes?
A. No, never with cigarettes.
Q. I phrased that too broadly.
A. Okay.
Q. Have you ever been involved with test marketing a cigarette product?
A. No.
Q. How were you advised of the promotional agreements that are available?
A. They're presented to me.
Q. At the same time as the new products?
A. Yeah.
Q. What else is discussed? New products, promotional agreements. Anything else?
A. I brought up in the conversation with

these people recently that we were going to downsize the size of the racks. That if they can give me any information, I can benefit from that.
Q. What was the response to your --

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A. Everybody wants to be as helpful as possible.
Q. In downsizing the racks?
A. In providing me the information from their company's point of view.
Q. What information is that?
MS. TUCKER: Objection. Calls for speculation.
MS. LONG: Join.
BY MS. FROSTROM:
Q. What information have you received along those lines?
A. Nothing yet. We just started talking about it.
Q. What information have you talked about receiving?
A. The only thing that's been discussed is how we are going to downsize the racks. The size of racks has been one of the things.
Q. Any discussion of using marketing or additional promotional agreements to try to prevent the downsizing?
A. Not to prevent downsizing, no.
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Q. Do you know what percentage of total store sales the cigarette sales constitute?
A. I would just have a guess. I don't know. It's small.
Q. It's a guess, not an estimate?
A. It's a guess.
Q. Do you have an estimate?
A. No.
Q. How are the cigarettes priced in Raley's stores?
A. We price offer our competition. Whatever is Safeway and Albertson's price, we try to stay right

with them.
Q. Do you do surveys to find out what the various prices are?
A. Yes.
Q. Who does those surveys?
A. We have our pricing people do them, and we have some outside people that do full-blown price surveys.
Q. A third-party marketing company?

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A. Yeah.
Q. Is there a company that you regularly use?
A. Not any one in particular.
Q. Can you remember any of the companies that you have used?
A. Retail Data Service out of Virginia. And then we have a merchandising company who would go out and take price surveys for us, also, which is called J & J Merchandising.
Q. What's the difference between the merchandising service and the data service?
A. The data service does nothing for us but collect price surveys, entire store surveys, and sends us the information.
Q. And the merchandising?
A. Then they do -- they do everything in the store. They do store sets, cut in new items, and they also do some price surveys.
Q. How often do you have price surveys

performed?
A. Depends on the area. I mean, if it's the Sacramento area, probably once a month.
Q. In the more rural area, would it be less often?
A. Three months.
Q. Is that the difference between an urban area and a rural area?
A. Yes.
Q. And you try to price your cigarettes the same?
A. Try to price with our competition. Wherever our competitors are in that area, we try to price with them.
Q. Does that mean the same or a little bit below?
A. It's -- sometimes, it's higher. Sometimes, it's lower. We have to estimate if making a one-cent price change is worth generating 400 scope ties. Sometimes we don't do that.
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